OAH 48-1005-21222-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE

In the Matter of County Loan Modification, LLC, a/k/a Mortgage Auditors of America, and Take The Land Nonprofit Housing Corporation, a/k/a TTL Nonprofit Processing Service	**ORDER DENYING SUMMARY DISPOSITION**

This matter came before Administrative Law Judge Steve M. Mihalchick on August 24, 2010, at the Office of Administrative Hearings on the Respondents' Motion for Summary Disposition. The record on the motion closed upon the conclusion of the hearing on August 24, 2010.

James A. Webster, Esq., MN Law Group, P.C., 971 Sibley Memorial Highway, Suite 106, Lilydale, MN 55118 appeared on behalf of County Loan Modification, LLC, a/k/a Mortgage Auditors of America (CLM), and Take The Land Nonprofit Housing Corporation, a/k/a TTL Nonprofit Processing Service (TTL)(collectively "Respondents"). Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department).

Based upon all of the files, records, and proceedings in this matter, and for the reasons detailed in the Memorandum below,

IT IS HEREBY ORDERED THAT Respondent's Motion for Summary Disposition is **DENIED**.

Dated: September 13, 2010

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

I. Factual and Regulatory Background

In 1998, the Legislature enacted the Minnesota Residential Originator and Servicer Licensing Act ("the Act"), a measure that regulates the practice of originating residential mortgages.[1] Under the Act, residential mortgage originators must either be directly licensed by the Department or covered by a specific statutory exemption.

The Act defines a number of terms used in the practice of mortgage origination including the following:

> Subd. 13. Mortgage broker; broker. "Mortgage broker" or "broker" means a person who performs the activities described in subdivisions 14 and 23.
>
> Subd. 14. Mortgage brokering; brokering. "Mortgage brokering" or "brokering" means helping to obtain from another person, for a borrower, a residential mortgage loan or assisting a borrower in obtaining a residential mortgage loan in return for consideration to be paid by the borrower or lender or both. Mortgage brokering or brokering includes, but is not limited to, soliciting, placing, or negotiating a residential mortgage loan.
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> * * *
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> Subd. 23. Soliciting, placing, or negotiating a residential mortgage loan. "Soliciting, placing, or negotiating a residential mortgage loan" means for compensation or gain or expectation of compensation or gain, whether directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting, or offering to assist a borrower in applying for a residential mortgage loan, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower.[2]

In early-October 2009, the Department became aware that Respondents were offering services in Minnesota that the Department considered to be mortgage modification services. Respondents do not have a mortgage origination license in Minnesota. The Department received complaints regarding the Respondents' activities and initiated an investigation.

The Department examined the Respondents' marketing materials, which included the following in a brochure entitled *What is a Forensic Audit?*:

1 See, Minn. Stat. §§ 58.01 – 58.18 (2006).

2 See, Minn. Stat. § 58.02 (2006).

> Mortgage Loan Forensics is a comprehensive examination of a mortgage loan file to identify regulatory violations and resulting remedies available to the borrower including the right to rescission (effectively a right to cancel the loan), interest payment refunds, defenses to foreclosure and civil damages.
>
> Mortgage Loan Forensics assists Mortgage Auditors of America in negotiating affordable workout solutions or modifications so borrowers can keep their home and lenders can mitigate their losses.[3]

Another marketing item, entitled *Are You A Victim of Mortgage Fraud?*, includes the following statement:

> Once the due diligence is completed, Mortgage Auditors of America and its in-house auditors, who are experienced in this type of law, will then attempt to negotiate with your lender on your behalf using the audit findings as leverage in order to achieve a favorable settlement.[4]

The Department obtained the Respondents' Minnesota business records by subpoena. Among those documents, the Department found forms entitled *Agreement for Services* using a number of different wordings. The *Agreement for Services* identified as the July 2009 version (July language) includes the following:

> … as a free service, [County Loan Modification, LLC, a/k/a Mortgage Auditors of America] will assist Client in obtaining a loan modification to retain ownership of subject property …
>
> * * *
>
> The loan modification/loss mitigation process can be resolved in as little as a few days. Typically, they are resolved in four (4) to eight (8) weeks. Due to the current demand on lending services and the high number of foreclosures nationally, this process may take as long as six (6) months. Client agrees to inform Company of any and all notices, communications, and/or offers from Client's lender(s). Client understands that if contacted by lender(s), they should inform lender(s) that they are working with Company.[5]

The Department identified agreements between at least 12 Minnesotans and Respondents using the July language.[6] The Department identified other

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3 Kosmalski Aff., Ex. 6 at DOC000050.

4 Id. at DOC000049.

5 Kosmalski Aff., Ex. 19, at DOC00l025-26.

6 Kosmalski Aff., Exs. 8, 10, 13, 16, 17, 20, 25, 27, 30, 33, 34, and 35.

documents, entitled *Payment Agreement* and *General Authorization Form* that included the following language:

> I (we) have entered into an agreement with County Loan Modification LLC (CLM) to provide forensic audit reports as well as the modification of my loan. I have agreed that the fee to CLM is $________________[7]

The Department noted that the Respondents' form entitled *Refund Agreement* recited the scope of agreed-to services and confirmed that any refund to the homeowner was dependent on Respondents' ability to modify the homeowner's mortgage stating:

> A. Client has entered into an agreement with Company to modify Client's loan on property located at ______________________
>
> B. Company has informed Client that a modification is not possible under their current situation with their lender.
>
> C. Company and Client wishes [sic] to terminate the Client's agreement and refund any money due to Client.[8]

Through the Department's investigation, the Respondents identified seven other transactions in which refunds were provided to clients after an inability to modify each client's home mortgage. The Department noted that each of the seven transactions had a nearly identical amount paid by and refunded to the clients. From this, the Department concluded that the clients had, in fact, paid for a mortgage modification and not a forensic audit. This conclusion was buttressed through interviews conducted by Department investigators, where the clients indicated that they believed they were purchasing mortgage loan modification services from Respondents.[9]

Respondents solicited homeowners to contract for services by airing at least 70 radio advertisements on KTTB 96.3 FM (known as B96), maintaining an Internet website, sending postcard solicitations directly to homeowners, and canvassing neighborhoods with salespersons using pre-determined scripts.[10] The Department noted that the sales scripts used by the Respondents focused on the potential for losing one's home through mortgage foreclosure and

7Kosmalski Aff., Ex. 26 at DOC001282 (8/25/09 version). The Department also noted that the September 23, 2009 version of the form changed the company name to "Mortgage Auditors of America" and left all other terms the same. Kosmalski Aff., Ex. 36 at DOC001653.

8 Kosmalski Aff, Ex. 14 at DOC000818 ("Company" is identified as CLM earlier in the document).

9 Kosmalski Aff., Ex. 25 at DOC00002I and Ex. 26 at DOC0021 54; Timothy Knautz Aff. ("Knautz Aff."), Ex. 4; Affidavit of Adrienne Lance-Lucas at RES0001 - RES 0010.

10 Knautz Aff., Ex. 5; Kosmalski Aff, Ex. 38; see also Kosmalski Aff., Ex. 25 at DOC001188; Kosmalski Aff., Ex. 41 at D0C001957; Kosmalski Aff., Ex. 44-45.

suggesting that the Respondents' services could avoid that outcome.[11] The radio advertising script reads as follows:

> MINNESOTA! IT'S TIME TO FIGHT BACK AGAINST THE BAD BANKS! WHILE THEY ARE GETTING BAILOUTS, WE ARE GETTING HANDOUTS OR EVEN WORSE- KICKED OUT OF THE PLACE THAT WE CALL HOME! DID YOU KNOW THAT PREDATORY LENDING IS A FORM OF DISCRIMINATION AND IT'S ILLEGAL? CIVIL RIGHTS, IS NOT ABOUT BLACK OR WHITE IT'S ABOUT WRONG AND RIGHT! IF YOU'RE FIGHTING TO SAVE YOUR HOME, YOU NEED MORE THAN HOPE TO STAY ALIVE! THIS IS YOUR BOY ZANNIE K, AND I CAN TELL YOU THAT THE MOST IMPORTANT PART OF A LOAN MODIFICATION IS GETTING LEGAL LEVERAGE AGAINST THE BANKS. WHY, BECAUSE THEY HAVE COMMITTED A CRIME AND YOU ARE THE VICTIM! HERE'S THE SECRET.. YOU NEED A DETAILED FORENSIC AUDIT OF YOUR MORTGAGE. THAT'S A PAGE BY PAGE- LINE-BY LINE REVIEW OF YOUR MORTGAGE DOCUMENTS. IDENTIFYING EVERY VIOLATION; GIVING YOU THE LEGAL LEVERAGE TO NEGOTIATE AND STOP BEGGING FOR RELIEF. YOU CAN SAVE YOUR HOME, THOUSANDS OF DOLLARS AND STOP A FORECLOSURE DEAD IN ITS TRACKS! MORTGAGE AUDITORS OF AMERICA IS THE PLACE TO GET YOUR FORENSIC MORTGAGE AUDIT. STOP GETTING ROBBED BY THE BANKS-FIGHT BACK! THERE IS NO RISK TO CALL AND NO CHARGE IF THEY CAN'T HELP. SO CALL NOW 877-630-7739, THAT'S 877-630-7739 OR GO TO MYMORTGAGEAUDITORS.COM[12]

Based on its investigation, the Department concluded that the Respondents were offering residential mortgage origination services without a license and in violation of Minnesota law.[13] On March 31, 2010, the Department issued a Notice of and Order for Prehearing Conference setting this matter on for contested case proceedings. The Department alleged that the Respondents violated the mortgage origination standards set in Minn. Stat. §§ 58.02, subds. 19 and 23, 58.04, subds. 1 and 3, and 58.12, subd. 1(2)(i). In addition, the Department alleged violations of the prohibition against deceptive and fraudulent practices contained in Minn. Stat. §§ 45.027, subd. 7(a)(2) and (4), 58.12, subd. 1(2)(iv) and (v), and 58.13, subd. 1(a)(9).[14]

11 Kosmalski Aff., Ex. 46.

12 Respondents' Brief, Attachment DOC 001701.

13 Kosmalski Aff., Ex. 3.

14 Notice of and Order for Prehearing Conference, at 5-6.

At the prehearing conference held in this matter, the parties agreed to a deadline of August 6, 2010, for dispositive motions. On August 6, 2010, the Respondents filed their Motion for Summary Disposition. The Department replied to the motion. Oral argument on the motion was conducted on August 24, 2010.

II. Standards for Summary Disposition

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.[15] The Office of Administrative Hearings has generally followed the summary judgment standards developed by state and federal courts when considering motions for summary disposition.[16] A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.[17]

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case.[18] The nonmoving party must establish the existence of a genuine issue of material fact by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05.[19] The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.[20]

When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party.[21] All doubts and factual inferences must be resolved against the moving party.[22] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.[23]

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15 Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955); Minn. R. 1400.5500K; Minn. R. Civ. P. 56.03.

16 See Minn. R. 1400.6600.

17 Illinois Farmers Insurance Co. v. Tapemark Co., 273 N.W.2d 630, 634 (Minn. 1978); Highland Chateau v. Minnesota Department of Public Welfare, 356 N.W.2d 804, 808 (Minn. App. 1984).

18 Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988); Hunt v. IBM Mid-America Employees Federal, 384 N.W.2d 853, 855 (Minn. 1986).

19 Id.; Murphy v. Country House, Inc., 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (Minn. 1976); Carlisle v. City of Minneapolis, 437 N.W.2d 712, 75 (Minn. App. 1988).

20 Carlisle, 437 N.W.2d at 715 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)).

21 Ostendorf v. Kenyon, 347 N.W.2d 834 (Minn. App. 1984).

22 See, e.g., Celotex, 477 U.S. at 325; Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988); Greaton v. Enich, 185 N.W.2d 876, 878 (Minn. 1971); Thompson v. Campbell, 845 F. Supp. 665, 672 (D. Minn. 1994).

23 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986).

III. Argument and Analysis

Statutory Authority

The Respondents contend that the provisions of Minn. Stat. Chapter 58 regarding mortgage brokers do not apply to assisting in the modification of a loan that the consumer already has. The Respondent urges that the language in Minn. Stat. § 58.02, subd. 23, which states "negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower" be read to mean only at the initial application for such a mortgage. The Respondents maintain that the Department's claimed of a violation in this proceeding constitutes "an improper attempt to administratively expand the scope of the statute's intended application to encompass activities that have nothing to do with the origination or brokering of residential mortgage loans, i.e., with helping a consumer obtain a loan."[24]

The Department responded that the plain language of the statute covered the Respondents' activities. Further, the Department noted that the Respondents' interpretation of the rule would render superfluous the second sentence of Minn. Stat. § 58.02, subd. 14 ("Mortgage brokering or brokering includes, but is not limited to, soliciting, placing, or negotiating a residential mortgage loan.") The Department contends that the second sentence incorporates by reference the phrase "soliciting, placing, or negotiating a residential mortgage loan," defined in subdivision 23 to include "negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower."[25]

At no point do any of these definitions limit activities to mortgage applications. There is no exclusion in subdivision 23 for negotiating terms to existing mortgages. The plain language of Minn. Stat. § 58.02, subds. 14 and 23, includes the activity of negotiating with a lender for a modification of terms of an existing mortgage. There is no interpretation of the statute needed to conclude that the Department has the authority to pursue the investigation and initiate the complaint against the Respondents. Summary disposition in favor of the Respondents on this issue is inappropriate.

Compensation or Gain

The Respondents note that under Minn. Stat. § 58.02, subd. 23, negotiating the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower must be done for "for compensation or gain or expectation of compensation or gain" for the activity to fall under the ambit of the

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24 Respondents' Brief, at 4.

25 Department Brief, at 10-11.

statute. The Respondents contend that "substantial evidence establishes that Respondents did not perform loan modification services for compensation or gain."[26]

In support of this contention, the Respondents rely on the terms of a version of the *Agreement for Services* that some of their clients signed prior to receiving services from Respondents.[27] The Respondents point to the language that states, "as a free service, Company will assist Client in obtaining a loan modification."[28] On the second page of the Agreement for Services, there is a space for the client's initials beside a statement that the client "is receiving a loan modification at no cost to Client and all fees paid are strictly for services in performing a forensic audit of Client's loan."[29] The Respondents contend that the terms of the contract demonstrate conclusively that no negotiations were conducted "for compensation or gain or expectation of compensation or gain" as required by Minn. Stat. § 58.02, subd. 23, for the licensing requirements to be triggered for negotiating the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower.

The Department disputes the Respondents' contention on this issue, noting that no homeowner could obtain any modification "unless he or she paid for Respondents' services." The Department also noted that the Respondents' Refund Agreement and subsequent actions demonstrated a direct connection between the services paid for by the homeowners and mortgage modification services, not the forensic audits as claimed by the Respondents. The homeowner's right to a refund was contingent only on whether Respondents were able to modify the underlying mortgage loan. The Department noted that the Respondents represented to potential clients that a refund would be forthcoming if Respondents were unable to modify the loan and the Respondents actually provided such refunds in such instances.[30] There is no connection between forensic mortgage audit activity and the clients' right to a refund under the Respondents' contracts. In addition, the other contract documents (*Payment Agreement*, *Refund Agreement*, and *General Authorization Form*) have explicit language describing CLM's services as loan modification.[31]

In essence, the Respondents are asserting that the terms of their contracts with their clients are severable to avoid triggering the licensing requirements of Minn. Stat. Chapter 58. As noted by the Minnesota Court of Appeals:

26 Respondents' Brief, at 5.

27 Respondents' Brief, at 5, Attachment DOC 000308-10.

28 Id., Attachment DOC 000308.

29 Id., Attachment DOC 000309.

30 Department Brief, at 11-13.

31See Kosmalski Aff, Ex. 14 at DOC000818 and Ex. 26 at DOC001282.

> The mere fact that a contract is organized by numbered provisions and may be divided does not make a contract severable. See e.g., *Bentley v. Edwards*, 125 Minn. 179, 183, 146 N.W. 347, 349 (1914) ("The mere fact that the subject of the contract is sold by weight or measure, and the value is ascertained by the price affixed to each pound or yard or bushel of the quantity contracted for, will not be sufficient to render the contract severable.")(quotation omitted). A contract is severable only when the parties intended to make the contract apportionable and it can be apportioned fairly. See *id*. at 184, 146 N.W. at 349; *Nat'l Farmers Union Prop. & Cas. Co. v. Anderson*, 372 N.W.2d 71, 75 (Minn. App. 1985) (stating that the intent of the parties must be ascertained in determining whether provisions are severable). When the parties intend the entirety of the contract to be performed, the provisions cannot be enforced separately. See *Bentley*, 125 Minn. at 183, 146 N.W. at 349; *Guercio v. Prod. Automation Corp.*, 664 N.W.2d 379, 385 (Minn. App. 2003).[32]

The contract between the Respondents and their clients is a single agreement that, by its terms, binds Mortgage Auditors (operating as CLM) to perform services in exchange for consideration from the client. The assertion that some service is described as "free" does not change the fact that consideration is received to render the contract binding on the parties. The services described in the contract are part of the whole and cannot be severed by Respondents in order to achieve a goal not identified in the contract. That goal is to avoid the statutory requirement of licensure by CLM.

Even if the contract provisions were deemed severable, the relevant language of the statute states, "compensation or gain or expectation of compensation or gain, whether directly or indirectly …."[33] The Department asserts that the latter phrase would include the mechanism used by Respondents in obtaining compensation from clients.

On summary disposition, all inferences must be taken in favor of the non-moving party, on this motion, the Department. The *Agreement for Services* contract provisions contain a simple statement regarding CLM providing forensic audit reports, followed by a long list of "free" services to be provided to the client. The inference most favorable to the Department from these facts is that CLM is, either directly or indirectly, obtaining compensation or gain from services to be provided through the transaction.[34] There are genuine issues of material fact to be determined regarding the operation of the forensic audit/mortgage

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32 Jerome Cheese Company v. Equinox Enterprises, Inc., A04-1960 (Minn.App. June 28, 2005).

33 Minn. Stat. § 58.02, subd. 23.

34 Depending on the specific language of the Agreement for Services executed by the parties, those services were to be provided by either CLM or TTL. Under either approach, taking the evidence in the light most favorable to the Department, a genuine issue of material fact regarding the provision of services remains for hearing.

modification system offered by the Respondents.[35] Summary disposition on Count I is inappropriate.

Deceptive Practices

Count II of the Department's complaint alleges violations of the statutes prohibiting deceptive business practices. The allegation in the Notice of and Order for Prehearing Conference stated:

> Respondents solicited mortgage modification services under the guise of providing "forensic audits" to distressed homeowners for an advance fee. Even though Respondents represented that the fee would be refunded if they could not modify the homeowner's loan, Respondents collected and failed to remit approximately $25,000 in up-front fees. Respondents engaged in fraudulent, deceptive, or dishonest practices, demonstrated untrustworthiness, and otherwise made false and misleading statements and representations in connection with loan modification activities. Minn. Stat. §§ 45.027, subd. 7(a)(2) and (4), 58.12, subd. 1(2)(iv) and (v), and 58.13, subd. 1(a)(9) (2008 and Supp. 2009); see also Minn. Stat. §* 58.13, subd. 1(a)(8), 325N.01, 325N.04(1), and 325N.06(d) (2008 and Supp. 2009).[36]

Subsequently, the Department described the basis for Count II as two-fold: 1) the Respondents were engaged in a dishonest attempt to evade the licensure requirement, and 2) the Respondents did not provide refunds to each customer after Respondents failed to modify the homeowner's mortgage loan.[37] The ALJ relies on the language in the Notice and Order to analyze the issues for this motion.

Respondents disputed whether the refund terms or the advertising script constituted deceptive practices, arguing:

> The Department alleges that Respondents represented that they would refund the forensic audit fee if Respondents could not modify the homeowner's mortgage loan. (Stmt. of Charges, p.3 ¶5, p.6). The only factual assertion in the Statement of Charges that could conceivably form the basis for the Department's allegations is its recitation of the statement in the radio script that "there is no risk to call and no charge if they can't help." (Stmt. of Charges, pp. 4-5 ¶8). However, this statement falls far short of the explicit representation that the Department alleges Respondents made. As

35 The Respondents criticized the quality of the evidence provided regarding interviews with clients conducted by the Department. This is not a valid issue when pursuing summary disposition, as the offered facts are taken in the light most favorable to the Department's position as the nonmoving party.

36 Notice and Order for Prehearing Conference, at 6.

37 Department Brief, at 13-14.

> already demonstrated, the advertisement was not an offer to provide loan modification services for a fee—it is an offer to provide forensic audit services. The question, then, is whether Respondents' representation that there is "no charge if they can't help" can reasonably be construed as promising to refund the fee that would be charged for the offered forensic audit services if Respondents were unable to assist the consumer in modifying their loan with their lender. Given that the solicitation is clearly for forensic audit services and not loan modification services, Respondents submit that such an inference is unreasonable, as there is no representation that loan modification services are being offered at all.[38]

A close examination of the radio advertising script reveals seven references to foreclosure, negotiation, or mortgage loan modification.[39] That which the Respondents treat as a "given," that the ad is clearly for forensic audit service and not for mortgage modification, is plainly not apparent in the script. The script strongly implies that clients will receive assistance in dealing with the mortgage lender.

The Respondents maintain that their position is supported by the script language that "there is no risk to call and no charge if they can't help." But, as the Department points out, "the homeowner's right to a refund hinged on whether Respondents were able to modify the underlying mortgage loan."[40] There is never an occasion where the Respondents could not have performed a forensic mortgage audit for a homeowner who is a mortgagor. The "if they can't help" language strongly implies that the Respondents are offering services to modify the loan, not merely conduct a forensic audit. Taking the facts in the light most favorable to the Department, summary disposition is inappropriate on the representations allegation in Count II.

The second allegation in Count II is that Respondents have not made good on the refund guarantee. The Department has identified clients who maintain that they have not received a refund from the Respondents when entitled to such a refund.[41] This is a genuine issue of material fact. Summary disposition is inappropriate on the refund policy allegation in Count II.

IV. Summary

38 Respondents' Brief, at 9-10.

39 Respondents' Brief, Attachment DOC 001701. The seven references are: 1) KICKED OUT OF THE PLACE THAT WE CALL HOME; 2) FIGHTING TO SAVE YOUR HOME; 3) LOAN MODIFICATION; 4) LEGAL LEVERAGE TO NEGOTIATE; 5) BEGGING FOR RELIEF; 6) SAVE YOUR HOME; and 7) STOP A FORECLOSURE. By contrast, there are two references to mortgage audits in the script.

40 Department Brief, at 12.

41 Kosmalski Aff., Ex. 3.

Summary disposition is appropriate in circumstances where there are no genuine issues of material fact. In this matter, there are disputed facts regarding both the application of the standards of Minn. Stat. Chapter 58 and whether the Respondents engaged in deceptive practices regarding its services offered to homeowners. For these reasons, denying the Respondents' motion is appropriate.

S.M.M.